(2)

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JAN 24 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 06-155

IN THE

Supreme Court of the United States

IN RE: ELEANOR AND RALPH SCHIANO,
PETITIONER,

v.

MBNA, CORPORATION, WOLPOFF & ABRAMSON, LLP,
PRESSLER & PRESSLER, COUNSELLORS AT LAW,
GERALD FELT, ESQ., PARTNER PRESSLER &
PRESSLER, AND NATIONAL ARBITRATION FORUM,
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITIONERS' PETITION FOR REHEARING

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GROUNDS FOR REHEARING

On November 21, 2006, Justice Souter granted a sixty (60) day extension, attached at 1c, to file a Petition for Rehearing in this Court so that petitioners could first move in district court with motion for clarification of arbitration issues that have not been addressed by any court. The refusal of any court to address petitioners' legal issues now brings the constitutionality of the Federal Arbitration Act (FAA) into question which requires notice to the Solicitor General, R. 29.4 (b). The district court neither confirmed nor vacated the paid first arbitration awards – and instead in effect ordered a second 'do-over' arbitration. This leaves petitioners' paid first arbitration award in 'limbo' -- neither valid nor invalid -- and leaves the paid first arbitration awards open to new determination by arbitration forum which now puts the constitutionality of the FAA in question.

Upon grant of extension of time, petitioners immediately moved for clarification in the district court. On December 28, 2006, the district court denied petitioners' motion, attached at 2c-10c. The district court admits that it had neither confirmed nor vacated the paid arbitration award, 2c at 8c-9c, but instead ordered second arbitration. The district court also deems petitioners' motion for clarification as an untimely motion for reconsideration. However, no court has addressed the arbitration issues presented in the motion for clarification. On January 5, 2007, petitioners filed petition for writ of mandamus in the Third Circuit requesting that the Third Circuit order district court to decide issues presented in motion for clarification. Third Circuit has yet to rule on matter. This Court may thus wish to delay decision as to Rehearing pending receipt of judgment order from the Third Circuit (new docket: 07-1092), or petitioners can withdraw Third Circuit petition.

Petitioners complied with the law, proceeded to arbitration, and paid the arbitration award two years ago.

Petitioners' payment of the award never reached the arbitration claimant, MBNA, as defendant law firms, who represented that they were counsel to MBNA during and after arbitration, never forwarded petitioners' payment to represented claimant, MBNA.[1] Despite payment of the arbitration award two years ago, petitioners' MBNA accounts remain delinquent on credit reports. The district court ordered second 'do-over,' arbitration, Certiorari App. C at 5a-40a. Petitioners appealed and filed writ of mandamus in Third Circuit as had direct appeal under sec. 16 (a) (1) (D) of the FAA for failure to confirm arbitration awards.

The Third Circuit did not address the appeal or mandamus and instead simply issued a motion denial of stay without judgment order contrary to Third Circuit I.O.P. 6.1, 6.2, App. A at 1a, attached 11c. This Court denied Certiorari but on November 21, 2006, Justice Souter granted an extention, attached App. 1c, in order for petitioners to proceed to district court with motion for clarification of arbitration issues that have not been addressed by any court. The clarification questions presented to this Court in motion for extension of time to file Petition for Rehearing and then to district court in motion for clarification are as follows:

A. The district court neither confirmed nor vacated the first arbitration award that was paid by petitioners, but rather ordered second 'do-over' arbitration so court determined "remaining [related] claims" could now be included in second 'do-over' arbitration, App.C, 5a at 19a. Under the FAA, sec. 16 (a) (1) (D), there is a direct appeal of failure to confirm an arbitration award [also direct appeal under 16 (a) (1) (E) and (a)

[1] Petitioners' counsel is pro bono. Costs for petitions were donated. Petitioners cannot refinance/obtain credit unless debt ($30,000.00) -- which was already paid but never forwarded to arbitration claimant, MBNA, by law firms, is paid again to MBNA.

(3)]. The Third Circuit did not address petitioners' appeal, App. 1a, attached 11c. In *Virgin Islands Housing Authority v. Coastal General Construction Services Corporation,* 27 F.3d 911 (3rd Cir. 1994), however, the Third Circuit held that when there is not merely a request for clarification but instead a remand for re-evaluation of the entire controversy then the latter equates to a vacatur of the award – which is also directly appealable under 16 (a) (1) (E). Further, under the FAA a clarification/modification of the award can only be brought within three (3) months of the award, 9 U.S.C. sec. 11, 12, – thus district court could not order modification of the awards in December 2005 as same would be untimely (arbitration awards were rendered in June 2004). Petitioners seek clarification as to whether remand to second 'do-over' arbitration is for untimely modification of the existing paid award or whether remand is for re-evaluation of the entire controversy which would equate to vacatur of the award. If the order is for re-evaluation of the entire controversy then the vacatur stands, and petitioners are entitled to return of payment of the first award ($30,000.00) prior to proceeding to second 'do-over' arbitration, *Virgin Islands Housing Authority,* supra.

B. Fraud in procurement of the arbitration awards must be resolved by the courts with discovery. *Pennecom B.V. v. Merrill Lynch and Company Inc.,* 372 F.3d 488 (2nd Cir. 2004) (paid award followed by complaint that award was procured through fraud in the arbitration – must be determined by courts with discovery); *Prima Paint Corp. v. Flood & Conklin,* 388 U.S. 395 (1967) (fraud in inducement of arbitration agreement is decided by courts); *Hines v. Anchor Motor Freight,* 424 U.S. 554 (1976) (fraud

claims are heard in federal court after arbitration). Petitioners request clarification as to whether the first paid arbitration award is confirmed or vacated -- and if vacated requires return of payment of first award prior to proceeding to second 'do-over' arbitration.

C. Petitioners already paid the first arbitration award and arbitration fees in the first arbitration. The issue here is unconscionable fees for the second 'do-over' arbitration and petitioners request, under *Green-Tree Financial Corp-Alabama v. Randolph,* 531 U.S. 79 (2000) and *Blair v. Scott Specialty Gases,* 283 F.3d 595 (3rd Cir. 2002), an "ability to pay" evidentiary hearing as their damages have escalated. The district court has made petitioners the claimants in second arbitration and the fees are excessive for second arbitration to determine how defrauded in first arbitration. Unconscionable fees must be decided and determination as to whether defendants, since second arbitration is in effect "do-over" of first arbitration, should pay the arbitration fees is also issue to be clarified.

D. Under *John Wiley & Sons, Inc. v. Livingston,* 376 U.S. 543 (1964) and *AT & T Technologies Inc. v. Communications Workers,* 475 U.S. 643 (1986), courts and not arbitrators decide issue of who has standing to compel arbitration. No court has addressed that issue in this case. Petitioners contend that MBNA sold petitioners' accounts prior to arbitration to defendant law firms and that law firms falsely represented MBNA as arbitration claimant during/after arbitration. Thus, no party has the right to compel arbitration. Clarification is requested as to whether arbitrators or court decides issue of who has standing to compel second arbitration. Petitioners

request all assignment/sale of rights' agreements and documentation of past/present ownership of petitioners' MBNA accounts establishing parties' right to compel arbitration.

E. The district court order only states that matter is remanded "to an arbitral forum," App. C, 5a at 19a. Clarification as to whom the arbitration is being remanded is requested. Petitioners request disclosure by the National Arbitration Forum (NAF), first arbitrators, of any relationship with the parties, including petitioners' federal action versus the NAF for fraud (direct appeal of immunity order once final order), that would preclude impartial determination and mandate recusal.

On December 28, 2006, the district court denied petitioners' motion for clarification and necessary discovery for clarification, attached 2c-10c. The district court admits that it neither confirmed nor vacated the paid first arbitration awards but instead sent the matter for second arbitration, 2c at 8c-9c, [in effect second arbitration amounts to 'do-over' of paid first arbitration awards]. The district court deems petitioners' motion for clarification of arbitration issues as an untimely motion for reconsideration. However, no court has addressed petitioners' valid arbitration issues.

Federal courts have jurisdiction and continuing authority to assist in court stayed arbitration matter. *Bruno Lloyd v. Hovensa, LLC.*, 369 F.3d 263 (3rd Cir. 2004) (citing 9 U.S.C. sec. 5-11). In an effort to exhaust remedies prior to proceeding with Petition for Rehearing, the Third Circuit was petitioned to order district court to decide clarification issues that have yet to be addressed by any court (also filed petition under Crime Victims' Rights Act, 18 U.S.C. sec. 3771 (d) (3) as the U.S. Department of Justice informed petitioners that a crime was committed and referred matter to the Federal

Bureau of Investigation (FBI). The Third Circuit has yet to rule on matter, and thus this Court may wish to delay Petition for Rehearing pending Third Circuit ruling, or petitioners can withdraw their petition in the Third Circuit.

STATEMENT

1. In October 2004, petitioners paid the June 2004 arbitration awards, $30,000.00, to represented arbitration claimant, MBNA. Petitioners made payment to MBNA care of MBNA's represented attorneys, defendant law firms, who represented MBNA as counsel during/after arbitration. Petitioners' money has been missing for over two years as their payment was never forwarded by law firms to claimant, MBNA. Despite payment of MBNA arbitration awards, petitioners' MBNA accounts remain delinquent. Petitioners allege that MBNA sold petitioners' accounts to defendant law firms prior to arbitration and that law firms falsely represented MBNA as arbitration claimant during/after arbitration. No discovery, including parties' standing/right to compel arbitration, was permitted in district court.

2. In December 2005, the district court neither confirmed nor vacated the awards but rather sent matter back for second 'do-over' arbitration to include petitioners' "remaining [related]claims" (fraud/violation of federal statutes), App.C, 5a-21a. Petitioners alleged that the NAF was complicit in awarding false arbitration award to MBNA. The NAF was granted immunity, App. B at 3a.

3. Petitioners appealed to Third Circuit (had direct appeal for failure to confirm, FAA sec. 16 (a) (1) (D)), and also filed petition for writ of mandamus. The case was curiously filed, submitted, and decided all on December

30, 2005 – during holiday week, App.A at 1a, attached at 11c. The matter was decided by standing motion panel "B" (B-41). However, the panel designated on the order is not the standing motion panel "B" for that time period. The Honorable D. Brooks Smith, designated on order, has recently referred the order back to the Clerk's office . The motion denial order is erroneous as a judgment order was required, I.O.P. 6.1, 6.2. The case was erroneously denied via motion and closed February 6, 2006.

4. Petitioners filed for en banc rehearing. Motion denials are not presented en banc, I.O.P. 10.3.3, yet petition for rehearing en banc rehearing was denied, App. F at 41a, attached at 12c. The case was also erroneously designated "pro se" (BPS-41).

5. Petitioners proceeded in this Court seeking review of what, in effect, only constituted a stay motion denial by Third Circuit rather than required judgment order. Certiorari was denied. On November 21, 2006, this Court granted extension of time to file Petition for Rehearing so that petitioners could first proceed to district court with a motion for clarification of unaddressed arbitration issues.

6. On December 27, 2006, district court denied motion for clarification, but admitted that it neither confirmed nor vacated the paid first MBNA arbitration awards, App. at 8c, and instead sent matter back for second arbitration as to petitioners' "remaining claims." Clarification motion was deemed an untimely motion for reconsideration. However, no court has addressed petitioners' arbitration issues.
7. On January 5, 2007, petitioners filed petition for writ of mandamus in Third Circuit requesting district court be ordered to decide arbitration issues. The Third Circuit has yet to rule on the matter. Petitioners also filed petition for

writ of mandamus pursuant to the Crime Victims' Rights' Act, 18 U.S.C. sec. 3771 (d) (3), as U.S. Department of Justice informed petitioners that a crime was committed and referred matter to the FBI (also issues of tax violations as to who reported collected payment to IRS, and no 1099C form was filed leaving petitioners vulnerable to taxes on charged off/sold forgiven debt that had already been paid to MBNA care of their represented counsel, defendant law firms).

ARGUMENT

In accordance with the FAA and established federal law, petitioners are entitled to have "some" court decide their arbitration issues that have yet to be decided by any court. The failure of any court to address petitioners' valid arbitration issues now places the constitutionality of the FAA in question.

Petitioners complied with the law, proceeded to arbitration, and paid MBNA arbitration awards (paid more than full debt) over two years ago. Payment of awards never reached arbitration claimant, MBNA, as defendant law firms, who represented that they were counsel to MBNA during/after arbitration, never forwarded petitioners' payment to represented claimant, MBNA, and accounts have thus remained delinquent.

The district court admits it neither confirmed nor vacated the first paid MBNA arbitration awards, but rather send matter back for second [in effect 'do-over'] arbitration. The clarificiation motion is erroneously deemed an untimely motion for reconsideration. However, arbitration issues presented in clarification motion have yet to be addressed by any court. Petitioners had a direct appeal under 16 (a) (1) (D), (E) and (a) (3) of the FAA for failure to confirm/vacate arbitration awards and unconscionable arbitration fees.

Under the Fourteenth Amendment and established law – petitioners are entitled to clarification of the 'do-over' second arbitration order -- especially since they have already paid a final/binding first arbitration award. Unless the federal courts address petitioners' valid legal issues, the paid first arbitration award is left in 'limbo' – neither valid nor invalid – and the paid first arbitration award is left vulnerable to new determination. This is contrary to the FAA, and thus the constitutionality of the FAA is now in question.

The district court and Third Circuit have continued jurisdiction to monitor and assist in court stayed arbitration matters. *Bruno Lloyd,* supra. Petitioners rely on the law and citations in their issues for clarification stated in Grounds for Rehearing including *Virgin Islands Housing Authority v. Coastal General Construction Services Corporation,* supra, *Pennecom B.V,* supra, *Prima Paint Corp,* supra, *Hines,* supra, *Blair,* supra, *Green-Tree,* supra, (Justice Ginsberg, joined by Justices Souter and Stevens, opined that neither certainty nor judicial economy are served by leaving the issue of excessive fees until the end of the line), *John Wiley & Sons, Inc.,* supra, *AT & T,* supra.

CONCLUSION

For the foregoing reasons, petitioners respectfully request that this Court grant their Petition for Rehearing. This Court may wish to delay decision on Petition for Rehearing pending receipt of Third Circuit ruling, docket number 07-1092, as to petitioners' petition for writ of mandamus.

Respectfully submitted,
s/_____
Helen E. Cooney (HCM 4226)
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(973) 633-8021
helenelmueller@yahoo.com
Dated: January 24, 2007

CERTIFICATION OF GOOD FAITH AND NOT TO DELAY

I hereby certify that the foregoing motion is made in good faith and not for the purpose of undue delay. I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,
s/_____
Helen E. Cooney (HCM 4226)
Attorney for Petitioners
11 Susan Avenue
Wayne, New Jersey 07470
(973) 633-8021
helenelmueller@yahoo.com

Dated: January 24, 2007

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

November 21, 2006

Ms. Helen E. Cooney
11 Susan Avenue
Wayne, NJ 07470

Re: Eleanor Schiano, et vir v. MBNA Corporation, et al.
Application No. 06A514

Dear Ms. Cooney:

The application for an extension of time within which to file a petition for rehearing in the above-entitled case has been presented to Justice Souter, who on November 21, 2006 extended the time to and including January 30, 2007.

This letter has been sent to those designated on the attached notification list.

NOT FOR PUBLICATION
Civil Action No.: 05-CV- 1771(JLL)
UNITED STATES DISTRICT COURT DISTRICT
OF NEW JERSEY

ELEANOR and RALPH SCHIANO, as wife and husband, and individually,
Plaintiffs,

v.

MBNA, corporation; WOLPOFF & ABRAMSON, LLP; PRESSLER & PRESSLER, Counsellors at Law; GERALD FELT, Esq., partner PRESSLER & PRESSLER; NATIONAL ARBITRATION FORUM,
Defendants.

OPINION

APPEARANCES: Helen E. Cooney Mueller
45 Swiss Terrace
Wayne, NJ 07470
(Attorney for Plaintiffs)

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16 River Road
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(Attorney for Defendants)

LINARES, District Judge.

INTRODUCTION

This matter comes before this Court on Plaintiffs' Motion for Clarification of this Court's December 2005 Orders. This Court has considered the submissions in support of and in opposition to this motion.[1] This matter is resolved without oral argument. Fed. R. Civ. P. 78. For the reasons set forth below, Plaintiffs' Motion for Clarification is DENIED.

PROCEDURAL BACKGROUND

A detailed factual background of this case is set forth in Magistrate Judge Hedges' November 16, 2005 and December 9, 2005 Report and Recommendations, as well as in this Court's December 19, 2005 Opinion and Orders, and will not be repeated here, except where necessary to provide context for the pending Motion for Clarification.

On December 19, 2005, this Court issued two Orders (hereinafter "December 2005 Orders"). The first Order adopted Magistrate Judge Hedges' November 16, 2005 Report and Recommendation, dismissing Defendant National Arbitration Forum ("NAF") from the case, and finding that Plaintiffs' claims as against NAF were barred by arbitral immunity. The second December 19, 2005 Order rejected Magistrate Judge Hedges' December 9, 2005 Report and Recommendation, and found, instead, that the entire matter is subject to arbitration. Thus, this Court granted Defendants' motion to compel the remaining claims to an arbitrable forum and ordered a stay of this proceeding.

It appears that Plaintiffs subsequently filed a Petition for Writ of Mandamus or, in the alternative, a request for permission to file an Interlocutory Appeal directly

to the United States Court of Appeals for the Third Circuit. Plaintiffs also filed a Motion to Stay the District Court's Order Compelling Arbitration Pending the Petition for Writ of Mandamus and/or an Interlocutory Appeal. The Third Circuit denied Plaintiffs' motions on February 6, 2006.

Plaintiffs' counsel also indicates that Plaintiffs requested clarification of the Third Circuit's February 6, 2006 Order. This request was apparently denied, as was Plaintiffs' application for en banc rehearing. (Pl. Br. at 4).

Plaintiffs subsequently proceeded to the United States Supreme Court, which denied certiorari on November 6, 2006. On November 21, 2006, the Supreme Court granted Plaintiffs' application to extend the time to file a petition for rehearing from December 1, 2006 to January 30, 2007. Plaintiffs' counsel alleges that the basis for the sixty (60) day extension granted by the Supreme Court was "so that plaintiffs could first move to the district court for clarification of the December 2005 district court orders and for necessary discovery for the clarification of the Orders." (Pl. Br. at 4).

STANDARD FOR RECONSIDERATION

Motions for reconsideration are governed by Local Civil Rule 7.1(i), which provides, in relevant part:

A motion for reconsideration shall be served and filed within 10 business days after the entry of the order or judgment on the original motion by the Judge or Magistrate Judge. A brief setting forth concisely the matter or controlling decisions which the party believes

the Judge or Magistrate Judge has overlooked shall be filed with the Notice of Motion. Unless the Court directs otherwise, any party opposing a motion for reconsideration shall file and serve a brief in opposition within seven business days after service of the moving party's Notice of Motion and Brief. . . .

L.Civ.R. 7.1(i). L. Civ. R. 7.1(i). Prior to reaching the merits of a motion for reconsideration, the court must determine whether the arguments are appropriately raised under the Local Rule. Holten v. Chevron, U.S.A., No. 00-4703, 2002 U. S. Dist. LEXIS 10151, *4 (D.N.J. May 20, 2002). "The motion may address only those matters of fact or issues of law which were presented to, but not considered by, the court in the course of making the decision at issue." Id. (citing Student Pub. Interest Research Group of N.J. v. Monsanto Co., 727 F. Supp. 876, 878 (D.N.J.), aff'd, 891 F.2d 283 (3d Cir.1989)).

The purpose of a motion for reargument is "to correct manifest errors of law or fact or to present newly discovered evidence." Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985), cert. denied, 476 U.S. 1171(1986); Tischio v. Bontex, Inc., 16 F. Supp. 2d 511, 532 (D.N.J.1998). The motion may not be used to re-litigate old matters or argue new matters that could have been raised before the original decision was reached. P. Schoenfeld Asset Mgmt., L.L.C. v. Cendant Corp.,161 F. Supp. 2d 349, 352 (D.N.J. 2001); NL Indus., 935 F. Supp. at 516. Mere disagreement with the Court will not suffice to show that the Court overlooked relevant facts or controlling law, United States v. Compaction Sys. Corp., 88 F. Supp. 2d 339, 345 (D.N.J. 1999), and should be dealt with through the normal

appellate process, S.C. ex rel. C.C. v. Deptford Twp Bd. of Educ., 248 F. Supp. 2d 368, 381(D.N.J. 2003).

With this legal framework in mind, the Court will now consider Plaintiffs' Motion for Clarification of this Court's December 2005 Orders.

LEGAL DISCUSSION

A. Plaintiffs' 60 Day Extension for Filing Rehearing Petition

Counsel for Plaintiffs represents that Plaintiffs were granted a sixty (60) day extension for filing a petition for rehearing in the United States Supreme Court so that Plaintiffs could first proceed to the District Court for clarification of its December 2005 Orders. (Pl. Not. of Motion at 2). In support of this statement, Plaintiffs' counsel attaches a docket sheet which indicates that Plaintiffs' petition for certiorari was denied on November 6, 2006, and that Plaintiffs' application to extend the time to file a petition for rehearing from December 1, 2006 to January 30, 2007 was granted by Justice Souter on November 21, 2006. (Pl. Not. of Motion, Ex. 1). Although Plaintiffs' counsel neglected to attach a copy of the actual November 21, 2006 letter from the Office of the Clerk of the Supreme Court of the United States to Plaintiffs' Motion for Clarification, the Court obtained a copy of same from Plaintiffs' counsel on December 8, 2006.

The Court has reviewed the Supreme Court's November 21, 2006 letter which does not provide that the extension of time was granted "so that plaintiffs could first proceed to the district court for clarification

of the December 2005 court orders." (Pl. Not. of Motion at 2). Rather, the November 21, 2006 letter is silent as to the basis upon which the extension of time was granted. Nevertheless, the Court trusts that the representations made by Plaintiffs' counsel are accurate. As such, the Court will address the merits of Plaintiffs' request for clarification.

B. Plaintiffs' Motion for Clarification

At the outset, the Court notes that Plaintiffs failed to cite to any applicable rule governing their request for clarification. To the extent that Plaintiffs now ask for reconsideration of this Court's December 2005 Orders, any such request is clearly untimely and is, therefore, denied.

See L. Civ. R. 7.1(i) (stating that a motion for reconsideration shall be served and filed within ten days after the entry of the Court's original order).

As a result, the Court need not reach the merits of any such request for reconsideration. To the extent that the Court should reach the merits of Plaintiffs' request, the Court finds that reconsideration is not warranted in this case, as Plaintiffs have failed to set forth any matters of fact or controlling decisions of law which were presented to, but overlooked, by this Court in reaching its December 2005 decisions. See e.g, Holten, 2002 U.S. Dist. LEXIS at *4 (stating that motions for reconsideration "may address only those matters of fact or issues of law which were presented to, but not considered by, the court in the course of making the decision at issue."); Scott v. IBM Corp., No. 98-

4092,2000 U.S. Dist. LEXIS 17979, at *3 (D.N.J. Nov. 29, 2000) (same).

To the extent that Plaintiffs merely ask for clarification of this Court's December 2005 Orders, despite providing no applicable rule governing such request, the Court has reviewed its December 2005 Orders, and finds that its December 19, 2005 Order adopting Magistrate Judge Hedges' November 16, 2005 Report and Recommendation, as well its December 19, 2005 Opinion and Order rejecting Magistrate Judge Hedges' December 9, 2005 Report and Recommendation are sufficiently clear to convey the Court's intent. Thus, Plaintiffs' Motion for Clarification is hereby DENIED.

CONCLUSION

For the reasons discussed above, Plaintiffs' Motion for Clarification is denied. An appropriate Order accompanies this Opinion.

DATED: December 27, 2006

JOSE L. LINARES,
UNITED STATES DISTRICT JUDGE

Footnotes

fn1 Plaintiffs' request to submit a reply brief was denied pursuant to this Court's December 8, 2006 Order.

fn2 The Court notes that its December 2005 Orders neither confirmed nor vacated the arbitration award, nor did this Court order a "second 'do-over' arbitration,"

as alleged by Plaintiffs. (Pl. Not. of Motion at 2). Rather, the Court determined that Plaintiffs' claims - which raise post-arbitration issues relevant to the underlying arbitration - were subject to arbitration in light of the arbitration provision contained in the agreement governing the pertinent accounts that Plaintiffs had with MBNA. Thus, the Court ordered that the proceeding be stayed pursuant to the Federal Arbitration Act, which mandates same. See 9 U.S.C. §3.

Civil Action No.: 05-CV- 1771(JLL)
UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY

ELEANOR and RALPH SCHIANO, as wife and husband, and individually,
Plaintiffs,

v.

MBNA, corporation; WOLPOFF & ABRAMSON, LLP; PRESSLER & PRESSLER, Counsellors at Law; GERALD FELT, Esq., partner PRESSLER & PRESSLER; NATIONAL ARBITRATION FORUM,
Defendants.

ORDER

LINARE, District Judge.

This matter, having cone before the Court on Plaintiffs' motion for Clarification of this Court's December 2005 Orders, and the Court having considered all submissions, and for the reasons set forth in the accompanying Opinion dated December 27, 2006,
IT IS on this 27th day of December, 2006,

ORDERED that Plaintiffs' motion for clarification is hereby DENIED. SO ORDERED.

11c

December 30, 2005

#B-41

No. 05-5565

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

In Re: Eleanor Schiano and Ralph Schiano, Petitioners
(Related to New Jersey-Newark Civil No. 05-cv-01771)

PRESENT: RENDELL, SMITH and BECKER, Circuit Judges.

1) Petition by Eleanor Schiano and Ralph Schiano for Writ of Mandamus or in the alternative to Construe the Petition as a Notice of Interlocutory Appeal. 2) Appendix in Support of Petition for Writ of Mandamus or in the alternative To Construe the Petition as a Notice of Interlocutory Appeal.
3) Motion by Petitioners, Eleanor Schiano and Ralph Schiano, for Stay of District Court Order Compelling Arbitration Pending Petition for Writ of Mandamus and/or Permission for Interlocutory Appeal.
4) Motion by Respondents for extension to file answer to petition.
5) Answer by Respondents to petition. (Not filed unless the Court Directs)
6) Response by Petitioners in Opposition to file answer to petition.

Response for Motion for Stay due by 1/12/06.
ORDER
The foregoing motions are DENIED.
By the Court,
/s/ Marjorie O. Rendell
Circuit Judge

BPS-041
NO. 05-5565
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

IN RE: ELEANOR SCHIANO AND RALPH SCHIANO, Petitioners

On Appeal, From the United States District Court For the District of New Jersey (D.C. Civil No. 05-cv-01771)
District Judge: Jose L. Linares

Present: SCIRICA, Chief Judge, SLOVITER, ROTH, McKEE, RENDELL, BARRY, FUENTES, SMITH, FISHER, VAN ANTWERPEN, and BECKER,* Circuit Judges

SUR PETITION FOR REHEARING WITH SUGGESTION FOR REHEARING IN BANC

The petition for rehearing filed by petitioners having been submitted to all judges who participated in the decision of this court, and to all the other available circuit judges in active service, and a majority of the judges who concurred in the decision not having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is hereby DENIED.

Footnote

*Honorable Edward R. Becker, Senior Judge of the United States Court of Appeals for the Third Circuit. vote limited to panel rehearing.